

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 5739, 5745, 5756, 5758, 5762, 5763,
5766, 5767, 5768, 5769, 5772, 5773, 5776, 5779, 5781,
5782, 5784, 5785, 5786, 5787, 5792, 5794, 5797, 5800,
5801, 5802, 5803, 5804, 5805, 5810, 5811, 5812, 5815,
5816, 5817, 5819 and 5820 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KODARBHAI MANKABHAI PATEL

Appearance:

MR SN SHELAT, ADVOCATE GENERAL with MR AD OZA, GP for
Appellant
MR JM BAROT for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 27/12/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. These are Appeals under Section 54 of the Land Acquisition Act read with Section 96 of the Civil Procedure Code at the instance of the State of Gujarat challenging the common judgment and awards passed by the Reference Court under Section 18 of the said Act.

2. We have heard the learned counsel for the appellant and learned counsel for the respondent.

3. The main and primary contention raised in this group of Appeals in the first instance pertains to limitation and estoppel. It was contended that the Reference Court has grossly erred in not appreciating appropriate evidence on record on two aspects. Firstly, that the reference applications made under Section 18 of the Act were not competent in as much as the claimants - original land-holders had accepted the amount of compensation offered by the Land Acquisition Officer without protest. Secondly, the reference applications made under Section 18 were time barred.

4. As a result of the hearing and discussion, we can only observe that the treatment meted out by the Reference Court to these two aspects of the matter, as narrated in paragraphs 11 and 12 of the judgment, is not merely casual but is also superficial. The treatment to these two serious and fundamental issues as to maintainability of the references under Section 18 is, to say the least, most unsatisfactory. At the same time, it appears to us that the State has also not availed itself fully of the opportunity to lead appropriate evidence in the matter nor enabled the Reference Court to do full justice to this controversy.

5. In this context, we can only note the observations of the Supreme Court in the case of Ram Kali Bhattacharjee vs. State of West Bengal reported in 1995 Supplement (3) SCC Page 314.

5.1 In the said case, the Supreme Court was faced with a similar difficulty namely paucity of evidence on the identical issue as to whether the references were time barred. The Supreme court therefore held that it was not desirable to decide this controversy without any factual foundation. The Supreme court therefore held that the appropriate course would be that the Reference

Court should go into the question. The Supreme Court therefore set aside the impugned judgment of the High Court as also the award and decree of the Reference Court. The matter was then remanded to the Reference Court and the latter was directed to decide the reference applications in accordance with law, with a direction that the question of limitation should be decided first, and in case it is in favour of the claimants, the Reference Court may then decide the compensation according to law.

6. Accordingly, since the facts in the instant case are very similar to those before the Supreme Court in the aforesaid decision, we set aside the impugned judgment and awards passed by the Reference Court. The cases are remanded back to the Reference Court with a direction that the latter shall apply its mind first to the question of limitation and estoppel on the basis of the evidence on record, together with such evidence as the parties may wish to lead on the subject, and then to decide these two aspects of the matter on merits and in accordance with law. In case the Reference Court comes to the conclusion that the references are not time barred and not barred by principles of estoppel, the Reference Court may then decide the aspect of compensation on the basis of such evidence which the parties may deduce in this regard.

7. It is accordingly so directed.

8. These Appeals are therefore allowed to the aforesaid extent with no orders as to costs.

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